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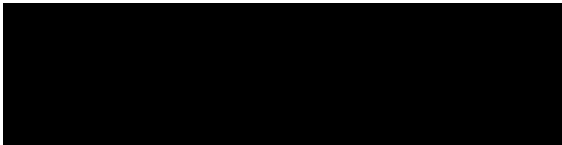
U.S. Department of Homeland Security
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Washington, DC 20536

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U.S. Citizenship
and Immigration
Services

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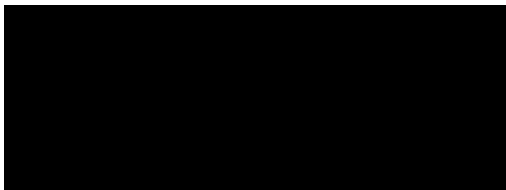


FILE: EAC 02 085 53587 Office: VERMONT SERVICE CENTER Date: **MAR 09 2004**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a marble and granite fabricator. It seeks to employ the beneficiary permanently in the United States as a supervisor. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director determined the petitioner had not established its financial ability to pay the beneficiary's proffered wage as of the petition's priority date.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the petition's priority date is February 13, 2001. The beneficiary's salary as stated on the labor certification is \$1,473.20 per week or \$76,606.40 per annum.

Counsel submitted copies of the petitioner's 1998 through 2000 Form 1120 U.S. Corporation Income Tax Return. The tax return for 2000 reflected gross receipts of \$1,146,032; gross profit of \$641,174; compensation of officers of \$76,320; salaries and wages paid of \$195,715; and a taxable income before net operating loss deduction and special deductions of -\$16,101. Net current assets were \$5,106.

The director determined that the evidence did not establish that the petitioner had the ability to pay the proffered wage and denied the petition accordingly.

On appeal, counsel argues that the petitioner has sufficient funds to pay the wage offered.

The petitioner's For 1120 U.S. Corporation Income Tax Return for calendar year 2001 shows net current assets of \$192,068. The petitioner could pay a salary of \$76,606.40 a year from this figure.

Accordingly, after a review of the federal tax return submitted, it is concluded that the petitioner has established that it had sufficient available funds to pay the salary offered as of the priority date of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.